



Headquarters Policy Flash

FLASH 2002-03

DATE: January 9, 2002
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **Partnership Agreement between the Department of Energy (DOE)
and the Small Business Administration (SBA)**

SUMMARY: Recently, the Secretary and the Administrator of the SBA executed a Partnership Agreement which delegates to DOE contracting officers the authority to execute on behalf of SBA contracts/subcontracts awarded pursuant to SBA's 8(a) Program. The Partnership Agreement is intended to expedite the award of such contracts. It will remain effective through June 30, 2003.

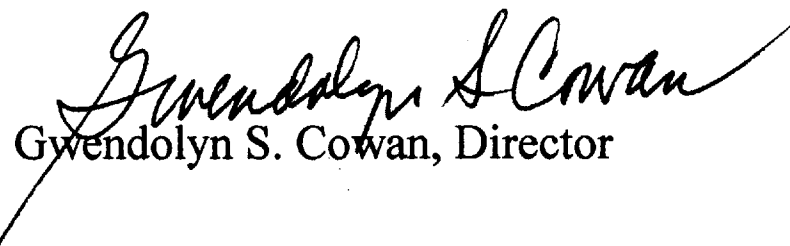
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Delegation of SBA's contracting officer authority occurred previously and was communicated by Acquisition Letter 98-09, dated June 26, 1998 (extensions of the delegation were later communicated by Flash 99-16, Flash 2000-04, and Flash 2000-17). The AL included a class deviation signed by the Procurement Executive. It also included a DOE modification to Part 19 of the Federal Acquisition Regulation (FAR) to implement the class deviation. AL 98-09 is rescinded by this Flash.

Since the class deviation was signed, the FAR has been modified at 19.801(f) to authorize agencies to promulgate regulations or other guidance to implement SBA's delegation of its contracting officer authority in the award of 8(a) contracts/subcontracts.

This Flash transmits a guide section which provides guidance implementing the Partnership Agreement in the award of contracts/subcontracts pursuant to SBA's 8(a) Program. A copy of the Partnership Agreement is attached to that guide section.

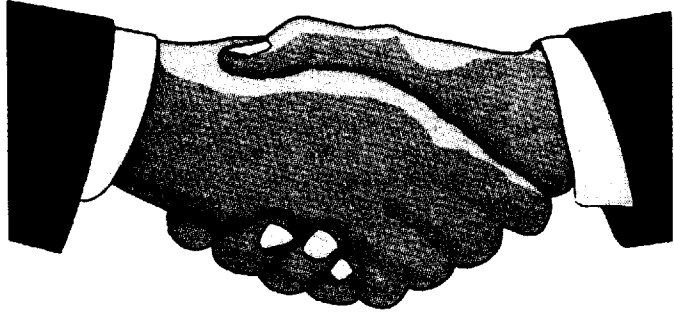
For questions related to this Flash, contact Robert Webb at (202) 586-8264 or via e-mail at Robert.Webb@pr.doe.gov


Gwendolyn S. Cowan, Director

Attachment

cc: PPAG Members

Delegation of SBA Contracting Officer Authority in the Award of Contracts and Subcontracts Pursuant to SBA's 8(a) Program



[Reference: FAR 19.8]

Overview

Recently, the Secretary and the Administrator of the Small Business Administration (SBA) executed a Partnership Agreement to expedite the award of requirements pursuant to section 8(a) of the Small Business Act. It will remain in effect through June 30, 2003. A copy is attached. This section discusses the effects of that Partnership Agreement on the way Department of Energy (DOE) contracting officers process awards under the 8(a) Program.

Guiding Principle

- ✓ Exercising SBA contracting officer authority in the award of 8(a) contracts/subcontracts in accordance with the DOE-SBA Partnership Agreement will speed the award process.

Background

Section 8(a) of the Small Business Act provides for the award of contracts to the SBA and the award of a subcontract to a small disadvantaged businesses accepted into the SBA's 8(a) Business Development Program. Depending on the values and other factors, awards made under this authority may be sole source or the result of competition limited to such firms.

The Federal Acquisition Regulation (FAR) at Subpart 19.8 regulates the award of contracts/subcontracts under the 8(a) program. Generally, that regulation requires the agency which is to receive performance to offer the procurement to the SBA. Depending upon the circumstances, the agency may identify an 8(a) firm which is to perform the work. Upon SBA's acceptance, the agency awards the prime contract to the SBA. The award document is to contain prescribed clauses for 8(a) awards and allow for its use as both the prime contract with the SBA and the subcontract with the selected 8(a) firm. The agency contracting officer then executes the contract/subcontract on behalf of the requiring agency and forwards it to the SBA where an SBA contracting officer executes the prime contract/subcontract and acquires the authorized execution by an official of the selected 8(a) firm. The result is a prime contract between the agency and the SBA and a subcontract between SBA and the selected 8(a) firm. However, absent termination or other special issues, the contract/subcontract is administered by the requiring agency.

The process of acquiring the signature of the SBA contracting officer takes time and

delays award. The Partnership Agreement has been designed to speed that process by the SBA's delegating its contracting officer authority, involved in the execution of the contract/subcontract, to the requiring agency.

Guidance

The Partnership Agreement and the delegation of contracting officer authority for the execution of 8(a) contracts/subcontracts is effective for contracts and purchase orders and for competitive and noncompetitive awards. The effect of the Partnership Agreement is to delegate only contracting officer authority in the execution of the contract/subcontract. The Partnership Agreement does not affect the parties or their roles, *i.e.*, SBA is the prime contractor and the 8(a) firm is a subcontractor to the SBA.

DOE must still supply SBA with offering letters for contracts/subcontracts in excess of the simplified acquisition threshold. The SBA may still reject a proposed 8(a) firm.

For sole source 8(a) awards in excess of the simplified acquisition threshold, SBA is allowed 5 working days after receipt of an offering letter to accept or reject the proposed award or 8(a) firm. However, under the terms of the Partnership Agreement, DOE may assume acceptance on the sixth working day.

For competitive 8(a) awards in excess of the simplified acquisition threshold, SBA is allowed 5 working days from receipt of an offering letter to accept or reject the procurement. DOE may assume acceptance on the sixth working day. Once the 8(a) firm

is selected or a competitive range is established, where no discussion are to be conducted, SBA has 2 working days to issue an eligibility determination for the selected firm or those firms in the competitive range.

In the case of procurements subject to simplified acquisition threshold procedures, DOE is not required to provide an offering letter. Instead, DOE is to provide SBA with a signed purchase order. SBA then has two working days after receipt to make a negative eligibility determination. If no such determination is made within those two working days, the 8(a) firm is authorized to begin performance.

The awarding office is required, within 15 calendar days of the date of award, to supply the SBA a copy of each 8(a) contract/subcontract where the award has been made exercising the delegation of SBA's contracting officer authority. Quarterly, SBA is to inform DOE's Office of Small Disadvantaged Business Utilization of any 8(a) requirements that the SBA accepted but for which SBA has not been furnished a copy of the award document.

Awarding offices are responsible for issuing procurement instrument identification numbers. The SBA will not issue subcontract numbers.

Awarding offices are obligated to ensure that all proposed joint ventures involving 8(a) firms are approved by SBA before a contract is awarded to the joint venture. Each of the other special situations requiring notification or special contract

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language discussed in the Partnership Agreement (i.e., SBA's approval of novation agreements, advance notice of any final termination of the contract, and identification of SBA as the prime contractor) are satisfied by the special 8(a) contract clauses at FAR 52.219-11 and -12.

PARTNERSHIP AGREEMENT
Between
The U.S. Small Business Administration
And
Department of Energy

I. PURPOSE

The purpose of this Partnership Agreement (PA) between the U.S. Small Business Administration (SBA) and the Department of Energy (DoE) is to establish basic procedures for expediting the award of requirements pursuant to section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)) (the Act), and the SBA's regulations. This PA replaces all terms and conditions of any previously executed Memorandum of Understanding (MOU).

II. OBJECTIVES

- a. To delineate the responsibilities regarding 8(a) contracts among the SBA and DoE;
- b. To establish the procedures for offer and acceptance between the SBA and DoE;
- c. To reduce the interval between the time DoE contracting offices send an offering letter to the SBA and receive an SBA decision on the offering to a maximum of 5 workdays;
- d. To emphasize that the SBA only delegates the authority to sign contracts on their behalf. The SBA remains the prime contractor on all 8(a) contracts;
- e. To eliminate SBA review of contracts and purchase orders executed under the authority of this PA; and
- f. To establish uniform policy and procedures regarding application of purchase orders to the 8(a) contracting process, when applicable.

III. SCOPE

This PA provides for the award of both contracts and purchase orders under the provisions of section 8(a) of the Act as implemented by the Federal Acquisition Regulation (FAR) (48 C.F.R.) and the SBA's 8(a) Business Development Program regulations.

This PA encompasses all competitive and non-competitive acquisitions of requirements offered by DoE contracting offices and accepted by the SBA into the 8(a) program.

This PA applies to all SBA offices and all DoE offices deemed appropriate by the head of the agency (as defined in FAR 2.101, Definitions) for DoE.

IV. RESPONSIBILITIES

a. The SBA:

1. delegates to the head of the agency, or designee, for redelegation to warranted DoE contracting officers, its authority under section 8(a)(1)(A) of the Act to enter into 8(a) prime contracts, and its authority under section 8(a)(1)(B) of the Act to arrange for the performance of such procurement contracts by eligible 8(a) Program Participants. In accordance with 13 C.F.R. 124.501(a), the SBA delegates only the contract execution function. The SBA remains the prime contractor on all 8(a) contracts, and the 8(a) Participant remains the SBA's subcontractor;
2. will implement its responsibilities under this PA through uniform procedures for use by all SBA offices;
3. shall review DoE's offering letters, issue acceptance or rejection letters, and make eligibility determinations:
 - (a) Sole source procurements. The SBA will issue an acceptance letter or notification of rejection within 5 working days of receipt of an offering letter. Absent a notification of rejection within 5 working days of receipt of the offer, acceptance may be assumed on the 6th working day. Acceptance shall include a size verification and determinations with respect to all elements of eligibility (e.g., determinations of adverse impact, North American Industry Classification System (NAICS) code appropriateness and program eligibility);
 - (b) Competitive acquisitions. The SBA will issue an acceptance letter or notification of rejection within 5 working days of receipt of an offering letter. Absent a notification of rejection within 5 working days of receipt of the offer, acceptance may be assumed on the 6th working day. Following receipt of bids, and within 2 working days after a request from the contracting officer, the SBA shall issue an eligibility determination for the firm with the lowest bid. In the case of a negotiated procurement following receipt of initial offers including price, and within 2 working days after a request from the contracting officer, the SBA shall issue an eligibility determination for all firms in the competitive range, if discussions are to be conducted.

The SBA will issue an eligibility determination for all firms with a realistic chance of award within 2 working days after a

request from the contracting officer, if no discussions are to be conducted;

(c) Requirements under the simplified acquisition threshold (FAR 2.101). The SBA will review the eligibility of the 8(a) Participant within 2 working days after receipt of a copy of the signed purchase order document. The purchase order document may be delivered by any means acceptable to the SBA district office. The SBA shall provide a copy of any negative eligibility determination to the contracting activity and the 8(a) Participant. Absent receipt of a negative eligibility determination from the SBA within 2 working days, the 8(a) contractor will be authorized to begin performance. No offering or acceptance letter is required for requirements processed under the simplified acquisition procedures threshold;

4. shall provide 8(a) Participants with assistance in contract negotiations when requested by either the 8(a) firm or the DoE contracting officer;
5. shall retain its appeal authority in accordance with FAR 19.810;
6. shall retain the right to perform on-site contract surveillance reviews;
7. shall retain the responsibility for compliance with all applicable provisions of 13 C.F.R. Part 124, including determining eligibility;
8. shall select an appropriate 8(a) Participant when DoE submits an open offering letter for a sole source requirement; and
9. will issue a letter to the DoE Office of Small and Disadvantaged Business Utilization, with a copy to the senior procurement executive (FAR 2.101), on a quarterly basis identifying accepted requirements for which award documents have not been received by the SBA district office.

b. The Federal agency:

1. shall submit to the SBA, not later than March 31, 2002, copies of any procedures developed to comply with this PA that are in addition to guidance provided by the Civilian Agency Acquisition Council (CAAC);

2. shall determine which requirements are suitable for offering to the 8(a) program in accordance with FAR Subpart 19.8, and, where appropriate, identify, in conjunction with the appropriate SBA servicing offices, 8(a) Participants capable of performing these requirements;
3. shall submit the offering letter for sole source requirements to the SBA's district office responsible for servicing the selected 8(a) Participant, when an 8(a) firm has been identified;
4. shall submit an open offering letter for sole source requirements to the SBA district office that services the geographical area where the DoE contracting activity is located, when DoE has not identified a specific 8(a) Participant for a requirement;
5. shall submit the offering letter for competitive 8(a) procurements to the SBA district office that services the geographical area where the Federal agency's contracting activity is located, except that offering letters for construction work will be sent to the SBA district office located in the geographical area where the work will be performed, or, in the case of such contracts to be performed overseas, to the SBA Headquarters;
6. shall retain responsibility for compliance with all applicable provisions of the FAR and other applicable acquisition regulations, unless a FAR deviation is obtained;
7. shall provide a copy of any contract, as defined in FAR 2.101, including basic contracts, orders, modifications, and purchase orders, to the SBA servicing district office within 15 calendar days of the date of award. Systemic failure to timely provide the required documents to the SBA may result in suspension or rescission of this PA;
8. shall retain the option to use tripartite procedures to award 8(a) contracts and purchase orders to 8(a) Participants as specified in FAR Part 19;
9. shall ensure that all contracts awarded pursuant to this PA contain provisions that:
 - (a) require the SBA's approval of novation agreements submitted by the 8(a) Participant; and

- (b) require advance notice to the SBA (as the prime contractor) prior to issuance of a final notice terminating the contract in whole or in part;
- 10. shall ensure that all North American Industry Classification System codes for all 8(a) Business Development contracts comply with FAR 19.102;
- 11. shall ensure that all contracts comply with the work performance requirements, in accordance with FAR 19.508(e);
- 12. shall add language to every contract stating that, even though the SBA may not be identified in section A of the contract, it is still the prime contractor on the contract; and
- 13. shall ensure that all proposed joint ventures involving 8(a) Participants are approved by SBA before contracts are awarded.

V. CONTRACT EXECUTION

The cognizant DoE contracting officer may make direct award of a contract to the 8(a) Participant, but only after the requirement has been offered to and accepted by the SBA. Acquisitions that employ the simplified acquisition procedures authorized by FAR Part 13, limited to the simplified acquisition threshold (FAR 2.101), require no offer or acceptance. Contract execution shall be on the appropriate form specified in the FAR or the DoE's acquisition regulations. The "Issued by" block shall identify the awarding DoE office. The cognizant SBA district office for the 8(a) Program Participant shall be identified in the award document. The 8(a) Participant's name and address shall be listed as the contractor. The DoE's contracting activities are responsible for issuing procurement instrument identification numbers; the SBA will not issue subcontract numbers.

VI. TERM

This PA will take effect as soon as both the SBA Administrator and the head of DoE have signed it. It will remain in effect until June 30, 2003.

VII. AMENDMENT

This PA may be amended, in writing, at any time by mutual agreement of the SBA's Associate Administrator for 8(a) Business Development (AA/8(a) BD) and DoE's senior procurement executive.

VIII. TERMINATION

This PA may be terminated by either SBA or DoE upon 30 days advance, written notice to the other party.

IX. PENALTIES

- a. Contracts that have not been offered to and accepted by the SBA into the 8(a) Business Development program cannot be used for DoE's 8(a) negotiated goals.
- b. The SBA reserves the option to suspend or rescind the authority of this PA if DoE fails to submit copies to the SBA of award documents within 15 working days of award.

X. ADMINISTRATION

Department of Energy:

Head of the agency, or delegee.

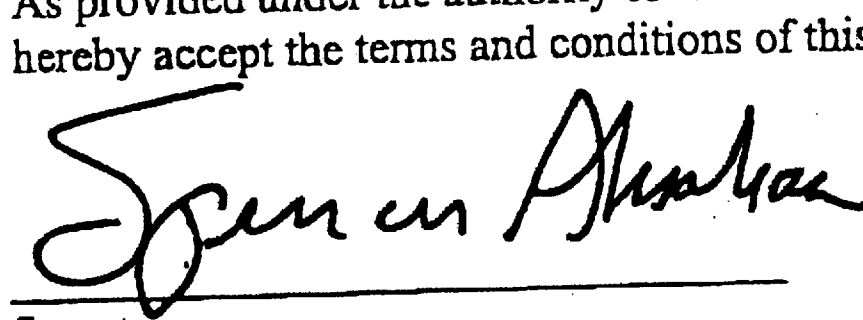
For the SBA:

Associate Administrator for
8(a) Business Development
409 3rd Street, SW
Washington, DC 20416
(202) 205-7340

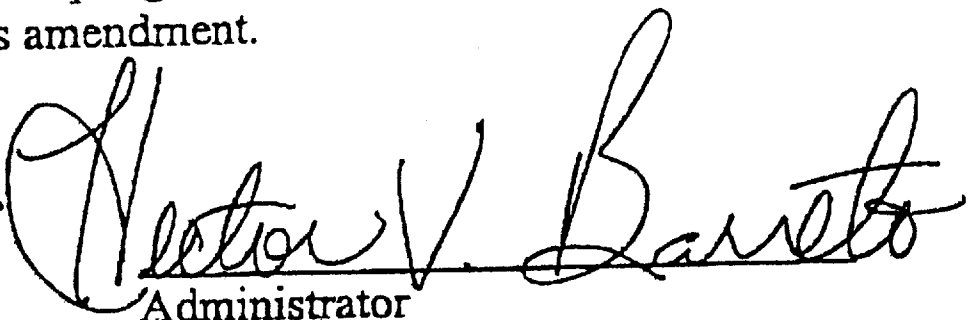
Deputy Associate Administrator for
8(a) Business Development
409 3rd Street, SW
Washington, DC 20416
(202) 205-6471

VIII. ACCEPTANCE

As provided under the authority of the Partnership Agreement, the undersigned parties hereby accept the terms and conditions of this amendment.



Secretary
Department of Energy



Administrator
U.S. Small Business Administration